

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, D.C. 20554

FCC 91M-2386
5764

In re Applications of)	MM DOCKET NO. 91-10 ✓
CHARLEY CECIL & DIANNA MAE WHITE)	File No. BPH-891213M
d/b/a WHITE BROADCASTING PARTNERSHIP)	
PEACHES BROADCASTING, LTD.)	File No. BPH-891214MN
DOUGLAS JOHNSON)	File No. BPH-891214MZ
NORTHEAST FLORIDA BROADCASTING CORP.)	File No. BPH-891214NA
JEM PRODUCTIONS, LIMITED PARTNERSHIP)	File No. BPH-891214ND
C/O JOYCE MORGAN)	
For Construction Permit for a)	
New FM Station on Channel 289A)	
in Baldwin, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: July 31, 1991 ; Released: August 5, 1991

1. Under consideration are 1) Motion to Enlarge Issues Against JEM Limited Partnership, filed May 24, 1991 by White Broadcasting Partnership; 2) Opposition to Motion to Enlarge Issues Against JEM Productions Limited Partnership, filed June 17, 1991 by JEM; and 3) Reply to Opposition to Motion to Enlarge Issues Against JEM Productions Limited Partnership, filed June 27, 1991 by White. White seeks the addition of the following issues against JEM:

- a) Whether JEM has violated Section 1.65 of the Commission's Rules in failing to timely report changes in the status of the formation of the limited partnership, and changes in the status of its limited partners from individuals to corporations, and the impact of such violation on Jem's basic qualifications to be a Commission licensee.
- b) Whether JEM misrepresented the status of its own formation as a limited partnership in its application to the Commission, such as to render it a sham limited partnership, and the impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee.
- c) Whether JEM misrepresented the ownership interests of Mr. Peter Knobel and/or Beylen Communications, Inc. in its application to the Commission, and the impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee.

2. JEM's May 9, 1991 amendment purports to reflect the "true date the certificate of limited partnership was filed in Dover, Delaware." In its application as originally filed, JEM stated that the date and place of its enabling charter was December 14, 1989, in Dover, Delaware. By its May 9, 1991 amendment, JEM informed the Commission that, in fact, its certificate of limited partnership was not filed until April 9, 1991. As good cause, JEM offered only that its error had been "recently" discovered. Since, according to JEM, its certificate of limited partnership was filed on April 9, 1991, JEM's discovery of its failure to file the certificate must have occurred prior to that date. If so, the amendment may be untimely pursuant to Section 1.65 of the Commission's rules. "It is possible," argues White, "that JEM discovered the problem as early as February, 1991." That mere possibility does not warrant the addition of an issue, at least, not at this time. JEM will be required to inform the presiding officer and the parties of the time it made its discovery, and the circumstances in which the discovery was made.

3. JEM was originally constituted this way:

Joyce Morgan, general partner, 20%
Peter Knobel, limited partner, 40%
Robin Rothschild, limited partner, 40%

A later Agreement of Limited Partnership, dated February 26, 1991, shows JEM to have become this:

Joyce Morgan, general partner, 20%
Beylen Communications, Inc., limited partner, 40%
Atlantic-Pacific Broadcasting, Inc., limited partner, 40%

A still later Agreement of Limited Partnership, this one dated May 2, 1991, shows JEM to be this:

Joyce Morgan, general partner, 50%
Beylen Communications, Inc., limited partner, 50%

4. The ownership change represented by the February 26, 1991 Agreement was never reported to the Commission. The genesis of JEM's most recent ownership change lies in two assignments executed by Ms. Robin Rothschild on May 3, 1991. By these assignments, Rothschild transferred "75% of [Atlantic-Pacific's] limited partnership interest in JEM" to the general partner Joyce Morgan, and "25% of [Atlantic-Pacific's] limited partnership interest in JEM" to Beylen Communications, Inc.

5. As a technical matter, Ms. Rothschild in her individual capacity had no limited partnership interest in JEM which she could have assigned on May 3, 1991 since, by the February 26, 1991 Agreement, JEM's only limited partners were Beylen Communications, Inc. and Atlantic-Pacific Broadcasting, Inc. However, Beylen is owned 100% by Peter Knobel and Atlantic-Pacific is owned 100% by Robin Rothschild. If prior to Rothschild's May 3, 1991 "assignments" she had assigned her individual interest in JEM to Atlantic-Pacific, and if Peter Knobel had assigned his individual interest in JEM to Beylen, a more symmetrical picture would be presented here. Such assignments were never reported to the Commission by JEM because they never occurred. JEM explains:

"The sole general partner in JEM believed it was unnecessary to inform the Commission of this change in status of the Limited Partners because the limited partners and the shareholders of the respective corporations are the same and there were no changes in their respective equity ownership interest."

6. Any reporting failure here is only technical in nature, involves no matter of decisional significance and does not warrant the specification of any issue. Merrimack Valley Broadcasting, Inc., 55 RR 2d 23 (1983); 99 FCC 2d 680 (1989).

7. White claims that JEM misrepresented its partnership status to the Commission. As indicated, JEM filed its application as a limited partnership, with Morgan as its general partner and with Knobel and Rothschild as its limited partners. When the application was filed, JEM had not filed its certificate of limited partnership with the State of Delaware. White argues that the non-filing of JEM's certificate with the State of Delaware rendered JEM, for all legal purposes, a general partnership, and this must have been known by JEM when it filed its application. JEM nevertheless elected to make application to the Commission as a limited partnership so that JEM could claim 100% quantitative integration credit for Morgan's participation rather than the mere 20% credit to which she might otherwise be entitled. In short, according to White, JEM's motive for "misrepresenting" its status as a limited partnership was to garner an integration credit to which it knew it was not entitled. White's argument is rejected. White cites no Commission authority, and the presiding officer is aware of none, for the proposition that JEM's failure to have filed its certificate before it filed its application rendered that applicant a general partnership for Commission purposes. The motive of JEM to falsify posited by White will not be found.

8. White claims that JEM engaged in deliberate misrepresentation in reporting an increase in Mr. Knobel's media holdings. Again, on the theory that JEM was a general partnership when Knobel held a certain media interest, White argues that that interest was not timely reported because of JEM's desire to avoid attribution of the media interest. The presiding officer finds no such motive.

Accordingly, IT IS ORDERED that the Motion IS DENIED; IT IS FURTHER ORDERED that JEM, within seven (7) days after the release of this Order, shall inform the parties and the presiding officer of the time and circumstances surrounding its discovery of the non-filing of its certificate of limited partnership.

FEDERAL COMMUNICATIONS COMMISSION


Edward Luton
Administrative Law Judge